
BEFORE THE STATE RECORDS COMMITTEE OF THE

STATE OF UTAH

ACLU of Utah and the Disability Law
Center,

Petitioner,

v.

DAVIS COUNTY,

Respondent.

DECISION AND ORDER

Case No. 18-15

By this appeal, Petitioner, the American Civil Liberties Union of Utah and the Disability Law Center, seeks access to records held by Respondent, Davis County.

FACTS

In a letter dated October 31, 2017, David C. Reymann, legal counsel for Petitioner, filed a request for records pursuant to the Government Records Access and Management Act (“GRAMA”). Counsel on behalf of Petitioner requested:

1. All written standards used or relied upon by Davis County in its administration and operation of the Davis County Jail at any time during the past five (5) years, including but not limited to the Utah Jail Standards;
2. All written contracts or agreements relating to or governing Davis County’s use of the standards referenced in request no. 1, including but not limited to any written license agreements and any documents reflecting any consideration paid by Davis County for use of the Utah Jail Standards;

3. All correspondence, including emails, between Davis County (including the Sheriff's Department), on the one hand, and Mr. Gary DeLand, Mr. Tate McCotter, the Utah Sheriffs' Association, the National Institute of Jail Operations, and/or DeLand and Associates, on the other hand, regarding the Utah Jail Standards or any portion thereof, including but not limited to any claims of business confidentiality (including any statements of reasons) submitted to Davis County pursuant to Utah Code § 63G-2-309; and
4. All final written audits and other reports assessing Davis County's compliance with the standards reference in request no. 1 issued at any time during the past five (5) years.

In a letter dated December 6, 2017, the Records Officer for Respondent granted in part and denied in part Petitioner's request for records.

An appeal was filed with James E. Smith, Chief Administrative Officer for GRAMA Appeals for Respondent. Mr. Smith affirmed the decision of the Records Officer finding that some of the requested records are not records under GRAMA because Respondent "did not prepare, does not own, does not receive and does not retain the Utah Jail Standards and/or the final written audits and other reports assessing [Respondent's] compliance with the Utah Jail Standards, in general."

Petitioner filed an appeal with the State Records Committee ("Committee"). The Committee having reviewed the arguments submitted by the parties, having reviewed the records *in camera* and having heard oral argument and testimony on April 12, 2018, now issues the following Decision and Order.

STATEMENT OF REASONS FOR DECISION

1. The Government Records Access and Management Act (“GRAMA”) specifies that “all records are public unless otherwise expressly provided by statute.” Utah Code § 63G-2-201(2). Records that are not public are designated as either “private,” “protected,” or “controlled.” See, Utah Code §§ 63G-2-302, -303, -304 and -305.
2. An *in camera* review of the records showed that Document 17 (unredacted Document 30), Document 24 (unredacted Document 49), Document 50, and Document 27 (unredacted Document 53) are public records subject to release to Petitioner.
3. Regarding the standards and final audit reports requested by Petitioner, the Committee finds that those records are not Respondent’s records. Therefore, since Respondent is not the owner of the records, Respondent is not required under GRAMA to produce the records to Petitioner. See, *Bryner v. Utah Dept. of Technology Serv.*, State Records Committee Case No. 16-27 (July 26, 2016). Records requests under GRAMA should be made to the actual record holder of a record and not to the governmental entity to whom the record has been shared. See, Utah Code § 63G-2-206(4); *Onysko v. Utah State Tax Commission*, State Records Committee Case No. 11-08 (June 20, 2011).

ORDER

THEREFORE, IT IS ORDERED THAT the appeal of Petitioner, ACLU of Utah and the Disability Law Center, is **GRANTED in part** and **DENIED in part**.

RIGHT TO APPEAL

A party to a proceeding before the Committee may seek judicial review in District Court

of a Committee's Order by filing a petition for review of the Committee Order as provided in Utah Code § 63G-2-404. Utah Code § 63G-2-403(14). A petition for judicial review of a Committee Order "shall be filed no later than 30 days" after the date of the Committee Order. Utah Code § 63G-2-404(1)(a). The petition for judicial review must be a complaint which is governed by the Utah Rules of Civil Procedure and include the Committee as a necessary party and contain the required information listed in Subsection -404(2). Utah Code § 63G-2-404(1) & (2). The court shall make its decision *de novo* but shall allow introduction of evidence presented to the Committee, determine all questions of fact and law without a jury, and decide the issue at the earliest practical opportunity. Utah Code § 63G-2-404(6). In order to protect a parties' rights on appeal, a party may wish to seek advice from an attorney.

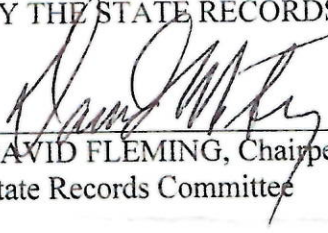
PENALTY NOTICE

Pursuant to Utah Code § 63G-2-403(15)(c), if the Committee orders the governmental entity to produce a record and no appeal is filed, the government entity herein shall comply with the order of the Committee and shall: (1) Produce the record; and (2) File a notice of compliance with the Committee. If the governmental entity ordered to produce a record fails to file a notice of compliance or a notice of intent to appeal, the Committee may do either or both of the following: (1) Impose a civil penalty of up to \$500 for each day of continuing noncompliance; or (2) Send written notice of the entity's noncompliance to the Governor. Utah Code § 63G-2-403(15)(d)(i)(B). In imposing a civil penalty, the Committee shall consider the gravity and circumstances of the violation, including whether the failure to comply was due to neglect or was willful or intentional.

Utah Code § 63G-2-403(15)(d)(ii).

Entered this 23 day of April 2018

BY THE STATE RECORDS COMMITTEE



DAVID FLEMING, Chairperson
State Records Committee

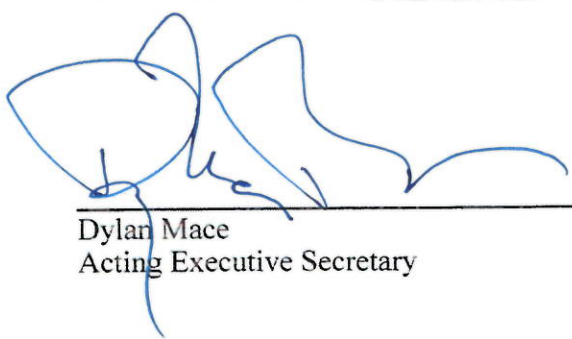
CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the foregoing Order, U.S. mail
postage prepaid, this ____ day of April 2018 to the following:

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